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State v. Parker Appellant's Brief Dckt. 43363

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SARA B. THOMAS
State Appellate Public Defender
I.S.B. #5867

JENNY C. SWINFORD
Deputy State Appellate Public Defender
I.S.B. #9263
P.O. Box 2816
Boise, ID 83701
(208) 334-2712

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43363
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR 2014-16370
v.)	
)	
SHALAKO SHAWN PARKER,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

After the district court sentenced Mr. Parker to six years, with two years fixed for grand theft, Mr. Parker moved for reconsideration of his sentence under Idaho Criminal Rule 35. The district court denied his motion without a hearing. Mr. Parker now appeals to this Court, contending that the district court abused its discretion by denying his motion for reconsideration of his sentence.

Statement of Facts and Course of Proceedings

On December 4, 2014, the State filed an Information charging Mr. Parker with grand theft, a felony, in violation of Idaho Code §§ 18-2403(1), -2407(1)(b), -2409, and burglary, a felony, in violation of Idaho Code § 18-1401. (R., pp.37–38.) On

December 31, 2014, Mr. Parker pled guilty to grand theft pursuant to a plea agreement with the State. (R., p.43.) The State agreed to dismiss the burglary charge and recommend a six-year sentence, with two years fixed. *Id.* The district court accepted Mr. Parker's guilty plea. *Id.*

On March 4, 2015, the district court sentenced Mr. Parker to six years, with two years fixed. (R., p.58.) The district court entered a Judgment of Conviction and Commitment on March 5, 2015. (R., pp.59–62.)

On June 14, 2015, Mr. Parker filed a memorandum in support of a motion for reconsideration of his sentence under Idaho Criminal Rule 35. (R., pp.67–71.) He filed the motion for reconsideration pursuant to Rule 35 a few days later on June 18, 2015. (R., p.76.) On June 22, 2015, the district court issued an Order Denying Rule 35 Motion. (R., pp.77–80.)

Mr. Parker filed a timely notice of appeal on July 9, 2015. (R., pp.82–83.)

ISSUE

Did the district court abuse its discretion when it denied Mr. Parker's motion for reconsideration of his sentence?

ARGUMENT

The District Court Abused Its Discretion When It Denied Mr. Parker's Motion For Reconsideration Of His Sentence

"A Rule 35 motion for reduction of sentence is essentially a plea for leniency, addressed to the sound discretion of the court." *State v. Carter*, 157 Idaho 900, 903 (Ct. App. 2014). In reviewing the grant or denial of a Rule 35 motion, the Court must "consider the entire record and apply the same criteria used for determining the

reasonableness of the original sentence.” *Id.* The Court “conduct[s] an independent review of the record, having regard for the nature of the offense, the character of the offender and the protection of the public interest.” *State v. Burdett*, 134 Idaho 271, 276 (Ct. App. 2000). “Where an appeal is taken from an order refusing to reduce a sentence under Rule 35,” the Court’s scope of review “includes all information submitted at the original sentencing hearing and at the subsequent hearing held on the motion to reduce.” *State v. Araiza*, 109 Idaho 188, 189 (Ct. App. 1985). “When presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion.” *State v. Huffman*, 144 Idaho 201, 203 (2007).

In this case, Mr. Parker submitted the following two statements in support of his motion for reconsideration of his sentence: “Since sentencing, the Defendant has remained incarcerated in the Elmore County Jail where he has been unable to participate in rehabilitative programming. Also his mother had severe health issues.” (R., p.69.) The district court concluded that neither statement presented any new information. (R., p.78.)

Mr. Parker contends that the first statement regarding his inability to participate in programming provided new information to the district court. The district court reasoned, “It is not new information to observe that an inmate may not be immediately eligible for the work center or that the sentence impacts his eligibility for specific programs. The Court was, and is, aware its sentence impacts Department of Correction programming decisions.” *Id.* Although it is not new information that a district court’s sentence generally impacts Department of Correction placement and programming,

Mr. Parker submits it is new information that in his case specifically he was still incarcerated in jail without any rehabilitative programming. Mr. Parker contends that a reduction in his fixed term of imprisonment could further his placement at a Department of Correction facility and assist him in obtaining rehabilitative programming. Therefore, Mr. Parker asserts that the district court abused its discretion by denying his motion for reconsideration of his sentence.

CONCLUSION

Mr. Parker respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that the district court's order denying his Rule 35 motion be vacated and his case remanded for further proceedings.

DATED this 22nd day of October, 2015.

_____/s/_____
JENNY C. SWINFORD
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 22nd day of October, 2015, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

SHALAKO SHAWN PARKER
INMATE #88776
ISCC
PO BOX 70010
BOISE ID 83707

CHERI C COPSEY
ADA COUNTY DISTRICT COURT
E-MAILED BRIEF

AUGUST H CAHILL
ADA COUNTY PUBLIC DEFENDER'S OFFICE
E-MAILED BRIEF

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

JCS/eas